

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

WP(C).No. 21617 of 2005(W)

PETITIONER:

GURUVAYOOR CO-OPERATIVE URBAN BANK LTD.,
NO.F 1652, GURUVAYOOR, REPRESENTED BY
ITS GENERAL MANAGER.

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENTS:

1. C.V. ANTONY, S/O. VARUNNY,
CEHMMANNOOR VEEDU, KARYAOR, PERAKOM VILLAGE,
CHAVAKKAD TALUK.
2. KERALA CO-OPERATIVE TRIBUNAL,
THIRUVANANTHAPURAM.
3. JOINT REGISTRAR OF CO-OPERATIVE
SOCIETIES (GENERAL), THRISSUR.

BY ADV. SRI.M.V.MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 25/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS

- EXT.P1- TRUE COPY OF JUDGMENT IN A.P.39/2002 OF THE KERALA CO-
OP. TRIBUNAL, TVM.
- EXT.P2- TRUE COPY OF REQUEST DATED 26.11.03 OF THE PETITIONER
TO THE 1ST RESPONDENT
- EXT.P3- TRUE COPY OF ORDER NO.AEL 6778/03 DATED 22.1.03 OF THE
3RD RESPONDENT
- EXT.P4- TRUE COPY OF REPRESENTATION SUBMITTED BY THE 1ST
RESPONDENT BEFORE THE 3RD RESPONDENT DTED 7.11.03

(TRUE COPY)

P.A TO JUDGE

J.M.JAMES, J.

W.P.(C). 21617/2005 (W)

Dated this the 25th day of January, 2007

JUDGMENT

The writ petitioner is the Co-operative Urban Bank. The first respondent availed a loan from the petitioner. There was a contract rate of interest, fixed at 22% per annum on the principal amount, from the date of the loan. An award was passed, accepting the same, by the Arbitrator. However, the same was challenged by the first respondent, through R.P.No.39/2002. As per the judgment dated 25.3.2003, the learned Co-operative Tribunal reduced the interest from 22% per annum to 6% per annum. The same is under challenge through this writ petition.

2. When the matter came up for consideration, the learned counsel for the writ petitioner placed reliance on **Kerala State Co-op. Bank Ltd v. The Kerala Co-op. Tribunal (2004 (2) KLJ 959)**. The Division Bench of this court had considered various authorities and

relying on Rule 67 (7) (b) as well as 67(10) of the Kerala Co-operative Societies Rules, 1969, in short 'the Rules', laid down in paragraph 10 of the judgment that the Registrar, the Arbitrator or the Tribunal, while applying the discretion, shall examine in the circumstances under which the transaction was made for the purpose of the loan, the reason for default, the rate of interest payable by the bank or the Societies, as the case may be, to the amounts obtained for disbursement of the same as loans to the loanees, the conduct of the loanee in re-paying the loan amount, the total amount outstanding, proportionality of interest accrued as well as the principal amount and other related exceptional matters. The application of Section 34 of C.P.C and the principle contained therein, may also be without offending the provisions contained in Note 2 to Rule 67(10) of the Rules. It also held that mechanical applications of **N.M.Veerappa v. Canara Bank (AIR 1998 SC 1101)** and **Central Bank of India v. Ravindra and Others (2002 (1) SCC 367)** together with Section 34

of C.P.C, in fixing unit rate of 6% interest to all the loanees cannot be justified. The Division Bench, therefore, remand the same to the Tribunal, directing the parties to appear before the Tribunal, so as to enable the Tribunal to re-hear the same.

3. In the above facts situation, after hearing all concerned, I set aside Ext.P1 judgment of the second respondent, The Kerala Co-operative Tribunal, and restore R.P.39/2002 to its file. The parties shall appear before the Kerala Co-operative Tribunal on 1.3.2007. The Tribunal shall hear all concerned and dispose of the same within two months thereafter.

The writ petition is allowed as above.

J.M.JAMES
JUDGE

mrCS